

AMENDED IN ASSEMBLY AUGUST 19, 2014

AMENDED IN ASSEMBLY AUGUST 4, 2014

AMENDED IN ASSEMBLY JULY 1, 2014

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN ASSEMBLY JUNE 9, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE MAY 6, 2014

AMENDED IN SENATE APRIL 21, 2014

AMENDED IN SENATE APRIL 2, 2014

SENATE BILL

No. 1319

**Introduced by Senator Pavley
(Coauthors: Senators Hill, Jackson, Lara, Leno, and Wolk)**

February 21, 2014

An act to amend Sections ~~8574.7~~, 8670.8, 8670.8.3, ~~8670.12~~, ~~8670.36~~, and 8670.54, and ~~8670.56.6~~ of, and to add Sections ~~8670.6.5~~, 8670.6.5 and 8670.15, ~~8670.29.5~~, and ~~8670.32.5~~ to, the Government Code, to amend Section 25364 of the Public Resources Code, and to amend ~~Sections~~ *Section* 765.5 and ~~7711~~ of the Public Utilities Code, relating to oil spills.

LEGISLATIVE COUNSEL'S DIGEST

SB 1319, as amended, Pavley. Oil spills: oil spill prevention and response.

(1) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at

the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government. ~~Existing law directs the Governor to require the administrator to amend, not in conflict with the National Contingency Plan, the California oil spill contingency plan to provide for the best achievable protection of waters of the state that contains specified elements, including, among others, a regional and local planning element. Existing law also requires the administrator to adopt and implement regulations governing the adequacy of oil spill contingency plans to be prepared and implemented and requires the regulations to provide for the best achievable protection of the waters and natural resources of the state.~~

This bill would expand the regional and local planning element of the California oil spill contingency plan to include the identification and mitigation of public health and safety impacts from an oil spill in waters of the state. The bill would authorize the administrator to obtain confidential and other information from the Office of Emergency Services, the State Energy Resources Conservation and Development Commission, and other regulators, as necessary, in order for the administrator to carry out his or her duties, and would require the administrator to develop procedures in handling the obtained information. The bill would require *the administrator to obtain and make publicly available, as specified, previously filed information related to the transport of oil through, near, or into communities, as specified.*

(2) *Existing law authorizes the administrator, upon request by a local government, to provide a program for training and certification of a local emergency responder designated as a local spill response manager by a local government with jurisdiction over or directly adjacent to waters of the state. The bill would require Existing law also authorizes the administrator to offer grants to a local government with jurisdiction over or directly adjacent to waters of the state to provide oil spill response equipment to be deployed by a specified local spill response manager and to request an appropriation for this purpose. The bill would require the administrator, no later than January 1, 2016, to conduct a study and evaluation for inland areas of the state and would require the administrator to obtain annually, at a minimum, information on the modes of transportation of oil into and within the state and the properties of the oil and to provide this information to the Oil Spill Technical*

~~Advisory Committee. The bill would also require the administrator, in consultation with the appropriate local, state, and federal regulators, to conduct a comprehensive risk assessment of nonvessel modes of transportation oil and to identify those operations that pose the highest risk of a pollution incident in state waters, as specified, and would require the administrator to obtain and make publicly available, as specified, previously filed information related to the transport of oil through, near, or into communities, as specified.~~

This bill would require the administrator to provide that program, upon request, and offer those grants and request an appropriation for that purpose.

~~(2) Existing law requires the administrator, within 5 working days after receipt of a contingency plan, prepared as specified, to post a notice that the plan is available for review. Existing law requires the State Lands Commission and the California Coastal Commission to review the plans for facilities or local governments within the coastal zone.~~

~~This bill would require the California Environmental Protection Agency and the Office of Emergency Services to review the plans for facilities and local governments located outside of the coastal zone.~~

(3) Existing law establishes the Oil Spill Technical Advisory Committee to provide public input and independent judgment of the actions of the administrator. The committee is composed of 14 members.

This bill would increase the number of members from 14 to 15 and would require the Governor to appoint an additional member with knowledge of the truck transportation industry.

(4) Existing law requires, beginning November 1, 2003, and every 2 years thereafter, the State Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission, to adopt an integrated energy policy report that contains an overview of certain topics including specified transportation forecasting and assessment activities. Existing law requires refiners, major marketers of petroleum products, major oil producers, oil transporters, and oil storers to submit specified information during specified periods to the commission. Existing law makes specified information collected by the commission confidential, subject to certain exceptions.

This bill would authorize the commission to disclose specified confidential information to the administrator for oil spill response ~~so long as if the administrator for oil spill response agrees to keep that information confidential, as specified.~~

(5) Existing law requires the Public Utilities Commission to establish, by regulation, the inspection of railroad locomotives, equipment, and facilities occur not less frequently than every 120 days, and, in addition to those minimum inspections, that the commission conduct focused inspections of railroad yards and track, either in coordination with the Federal Railroad Administration or as the commission determines to be necessary.

This bill would expand those inspections to include *railroad* bridges and grade crossings over which oil is being transported and oil unloading *rail* facilities, as specified. ~~The bill also would authorize the commission to regulate essential local safety hazards for the transport of oil more stringently than federal regulation, as specified.~~

~~Existing law requires the commission to report to the Legislature, on or before July 1 each year, on sites on railroad lines in the state it finds to be hazardous, as specified.~~

~~This bill would expand that annual report to the Legislature to include the timing, nature, and status of the remediation of defects or violations of federal and state law related to the transport and unloading of oil detected by the commission through its inspections.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 8574.7 of the Government Code is~~
2 ~~amended to read:~~
3 ~~8574.7. The Governor shall require the administrator, not in~~
4 ~~conflict with the National Contingency Plan, to amend the~~
5 ~~California oil spill contingency plan to provide for the best~~
6 ~~achievable protection of waters of the state. For purposes of this~~
7 ~~section, “administrator” means the administrator appointed by the~~
8 ~~Governor pursuant to Section 8670.4. The plan shall consist of all~~
9 ~~of the following elements:~~
10 ~~(a) A state response element that specifies the hierarchy for state~~
11 ~~and local agency response to an oil spill. The element shall define~~
12 ~~the necessary tasks for oversight and control of cleanup and~~
13 ~~removal activities associated with an oil spill and shall specify~~
14 ~~each agency’s particular responsibility in carrying out these tasks.~~
15 ~~The element shall also include an organizational chart of the state~~
16 ~~oil spill response organization and a definition of the resources;~~

1 capabilities, and response assignments of each agency involved
2 in cleanup and removal actions in an oil spill.

3 (b) ~~A regional and local planning element that shall provide the~~
4 ~~framework for the involvement of regional and local agencies in~~
5 ~~the state effort to respond to an oil spill, and shall ensure the~~
6 ~~effective and efficient use of regional and local resources, as~~
7 ~~appropriate, in all of the following:~~

8 (1) ~~Traffic and crowd control.~~

9 (2) ~~Firefighting.~~

10 (3) ~~Boating traffic control.~~

11 (4) ~~Radio and communications control and provision of access~~
12 ~~to equipment.~~

13 (5) ~~Identification and use of available local and regional~~
14 ~~equipment or other resources suitable for use in cleanup and~~
15 ~~removal actions.~~

16 (6) ~~Identification of private and volunteer resources or personnel~~
17 ~~with special or unique capabilities relating to oil spill cleanup and~~
18 ~~removal actions.~~

19 (7) ~~Provision of medical emergency services.~~

20 (8) ~~Identification and mitigation of public health and safety~~
21 ~~impacts.~~

22 (9) ~~Consideration of the identification and use of private working~~
23 ~~craft and mariners, including commercial fishing vessels and~~
24 ~~licensed commercial fishing men and women, in containment,~~
25 ~~cleanup, and removal actions.~~

26 (c) ~~A coastal protection element that establishes the state~~
27 ~~standards for coastline protection. The administrator, in~~
28 ~~consultation with the Coast Guard and Navy and the shipping~~
29 ~~industry, shall develop criteria for coastline protection. If~~
30 ~~appropriate, the administrator shall consult with representatives~~
31 ~~from the States of Alaska, Washington, and Oregon, the Province~~
32 ~~of British Columbia in Canada, and the Republic of Mexico. The~~
33 ~~criteria shall designate at least all of the following:~~

34 (1) ~~Appropriate shipping lanes and navigational aids for tankers,~~
35 ~~barges, and other commercial vessels to reduce the likelihood of~~
36 ~~collisions between tankers, barges, and other commercial vessels.~~
37 ~~Designated shipping lanes shall be located off the coastline at a~~
38 ~~distance sufficient to significantly reduce the likelihood that~~
39 ~~disabled vessels will run aground along the coast of the state.~~

40 (2) ~~Ship position reporting and communications requirements.~~

~~(3) Required predeployment of protective equipment for sensitive environmental areas along the coastline.~~

~~(4) Required emergency response vessels that are capable of preventing disabled tankers from running aground.~~

~~(5) Required emergency response vessels that are capable of commencing oil cleanup operations before spilled oil can reach the shoreline.~~

~~(6) An expedited decisionmaking process for dispersant use in coastal waters. Prior to adoption of the process, the administrator shall ensure that a comprehensive testing program is carried out for any dispersant proposed for use in California marine waters. The testing program shall evaluate toxicity and effectiveness of the dispersants.~~

~~(7) Required rehabilitation facilities for wildlife injured by spilled oil.~~

~~(8) An assessment of how activities that usually require a permit from a state or local agency may be expedited or issued by the administrator in the event of an oil spill.~~

~~(d) An environmentally and ecologically sensitive areas element that shall provide the framework for prioritizing and ensuring the protection of environmentally and ecologically sensitive areas. The environmentally and ecologically sensitive areas element shall be developed by the administrator, in conjunction with appropriate local agencies, and shall include all of the following:~~

~~(1) Identification and prioritization of environmentally and ecologically sensitive areas in state waters and along the coast. Identification and prioritization of environmentally and ecologically sensitive areas shall not prevent or excuse the use of all reasonably available containment and cleanup resources from being used to protect every environmentally and ecologically sensitive area possible. Environmentally and ecologically sensitive areas shall be prioritized through the evaluation of criteria, including, but not limited to, all of the following:~~

~~(A) Risk of contamination by oil after a spill.~~

~~(B) Environmental, ecological, recreational, and economic importance.~~

~~(C) Risk of public exposure should the area be contaminated.~~

~~(2) Regional maps depicting environmentally and ecologically sensitive areas in state waters or along the coast that shall be distributed to facilities and local and state agencies. The maps shall~~

1 ~~designate those areas that have particularly high priority for~~
2 ~~protection against oil spills.~~

3 ~~(3) A plan for protection actions required to be taken in the~~
4 ~~event of an oil spill for each of the environmentally and~~
5 ~~ecologically sensitive areas and protection priorities for the first~~
6 ~~24 to 48 hours after an oil spill shall be specified.~~

7 ~~(4) The location of available response equipment and the~~
8 ~~availability of trained personnel to deploy the equipment to protect~~
9 ~~the priority environmentally and ecologically sensitive areas.~~

10 ~~(5) A program for systemically testing and revising, if necessary,~~
11 ~~protection strategies for each of the priority environmentally and~~
12 ~~ecologically sensitive areas.~~

13 ~~(6) Any recommendations for action that cannot be financed or~~
14 ~~implemented pursuant to existing authority of the administrator,~~
15 ~~which shall also be reported to the Legislature along with~~
16 ~~recommendations for financing those actions.~~

17 ~~(e) A reporting element that requires the reporting of spills of~~
18 ~~any amount of oil in or on state waters.~~

19 ~~SEC. 2.~~

20 *SECTION 1.* Section 8670.6.5 is added to the Government
21 Code, to read:

22 8670.6.5. The administrator may obtain confidential and other
23 information protected from public disclosure from the Office of
24 Emergency Services, the State Energy Resources Conservation
25 and Development Commission, and other regulators, as necessary,
26 in order for the administrator to carry out his or her duties. The
27 administrator shall develop procedures for handling the obtained
28 information consistent with the California Public Records Act
29 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
30 Title 1), Section 25364 of the Public Resources Code, and federal
31 law.

32 ~~SEC. 3.~~

33 *SEC. 2.* Section 8670.8 of the Government Code is amended
34 to read:

35 8670.8. (a) The administrator shall carry out programs to
36 provide training for individuals in response, containment, and
37 cleanup operations and equipment, equipment deployment, and
38 the planning and management of these programs. These programs
39 may include training for members of the California Conservation
40 Corps, other response personnel employed by the state, personnel

1 employed by other public entities, personnel from marine facilities,
2 commercial fishermen and other mariners, and interested members
3 of the public. Training may be offered for volunteers.

4 (b) The administrator may offer training to anyone who is
5 required to take part in response and cleanup efforts under the
6 California oil spill contingency plan or under local government
7 contingency plans prepared and approved under this chapter.

8 (c) Upon request by a local government, the administrator shall
9 provide a program for training and certification of a local
10 emergency responder designated as a local spill response manager
11 by a local government with jurisdiction over or directly adjacent
12 to waters of the state.

13 (d) Trained and certified local spill response managers shall
14 participate in all drills upon request of the administrator.

15 (e) As part of the training and certification program, the
16 administrator shall authorize a local spill response manager to train
17 and certify volunteers.

18 (f) In the event of an oil spill, local spill response managers
19 trained and certified pursuant to subdivision (c) shall provide the
20 state onscene coordinator with timely information on activities
21 and resources deployed by local government in response to the oil
22 spill. The local spill response manager shall cooperate with the
23 administrator and respond in a manner consistent with the area
24 contingency plan to the extent possible.

25 (g) Funding for activities undertaken pursuant to subdivisions
26 (a) to (c), inclusive, shall be from the Oil Spill Prevention and
27 Administration Fund created pursuant to Section 8670.38.

28 (h) All training provided by the administrator shall follow the
29 requirements of applicable federal and state occupational safety
30 and health standards adopted by the Occupational Safety and
31 Health Administration of the Department of Labor and the
32 Occupational Safety and Health Standards Board.

33 ~~SEC. 4.~~

34 *SEC. 3.* Section 8670.8.3 of the Government Code is amended
35 to read:

36 8670.8.3. The administrator shall offer grants to a local
37 government with jurisdiction over or directly adjacent to waters
38 of the state to provide oil spill response equipment to be deployed
39 by a local spill response manager certified pursuant to Section
40 8670.8. The administrator shall request the Legislature to

1 appropriate funds from the Oil Spill Prevention and Administration
2 Fund created pursuant to Section 8670.38 for the purposes of this
3 section.

4 SEC. 5. ~~Section 8670.12 of the Government Code is amended~~
5 ~~to read:~~

6 ~~8670.12. (a) (1) The administrator shall conduct studies and~~
7 ~~evaluations necessary for improving oil spill response, containment,~~
8 ~~and cleanup and oil spill wildlife rehabilitation in waters of the~~
9 ~~state and oil transportation systems. The administrator may expend~~
10 ~~moneys from the Oil Spill Prevention and Administration Fund~~
11 ~~created pursuant to Section 8670.38, enter into consultation~~
12 ~~agreements, and acquire necessary equipment and services for the~~
13 ~~purpose of carrying out these studies and evaluations.~~

14 ~~(2) On or before January 1, 2016, the administrator shall conduct~~
15 ~~a study and evaluation pursuant to paragraph (1) for inland areas~~
16 ~~of the state. The study and evaluation shall include, but shall not~~
17 ~~be limited to, an analysis of likely spill scenarios, response~~
18 ~~requirements for oil of varying properties and urban, rural, and~~
19 ~~sensitive environments, and spill response equipment and~~
20 ~~resources.~~

21 ~~(b) The administrator shall study the use and effects of~~
22 ~~dispersants, incineration, bioremediation, and any other methods~~
23 ~~used to respond to a spill. The study shall periodically be updated~~
24 ~~to ensure the best achievable protection from the use of those~~
25 ~~methods. Based upon substantial evidence in the record, the~~
26 ~~administrator may determine in individual cases that best~~
27 ~~achievable protection is provided by establishing requirements~~
28 ~~that provide the greatest degree of protection achievable without~~
29 ~~imposing costs that significantly outweigh the incremental~~
30 ~~protection that would otherwise be provided. The studies shall do~~
31 ~~all of the following:~~

32 ~~(1) Evaluate the effectiveness of dispersants and other chemical~~
33 ~~agents in oil spill response under varying environmental conditions.~~

34 ~~(2) Evaluate potential adverse impacts on the environment and~~
35 ~~public health including, but not limited to, adverse toxic impacts~~
36 ~~on water quality, fisheries, and wildlife with consideration to~~
37 ~~bioaccumulation and synergistic impacts, and the potential for~~
38 ~~human exposure, including skin contact and consumption of~~
39 ~~contaminated seafood.~~

~~(3) Recommend appropriate uses and limitations on the use of dispersants and other chemical agents to ensure they are used only in situations where the administrator determines they are effective and safe.~~

~~(e) The administrator shall evaluate the feasibility of using commercial fishermen and other mariners for oil spill containment and cleanup. The study shall examine the following:~~

~~(1) Equipment and technology needs.~~

~~(2) Coordination with private response personnel.~~

~~(3) Liability and insurance.~~

~~(4) Compensation.~~

~~(d) The studies shall be performed in conjunction with any studies performed by federal, state, and international entities. The administrator may enter into contracts for the studies.~~

~~SEC. 6.~~

~~SEC. 4.~~ Section 8670.15 is added to the Government Code, to read:

8670.15. (a) To the extent allowed by federal and state law and to provide public transparency, the Legislature declares it is the policy of the state that communities that face significant risks associated with the transport or planned transport of significant quantities of oil through or near those communities be notified of the quantities and properties of the oil in a timely manner.

(b) The administrator shall obtain and make publicly available, as allowed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and federal law, previously filed information related to the transport of oil through, near, or into communities. The previously filed information shall include the type and quantity of oil and its mode of transport. The previously filed information shall be obtained annually, at a minimum, and shall cover the immediately preceding 12-month period.

(c) For purposes of this section, “transport” includes transport or planned transport by vessel, truck, railroad, or pipeline.

~~SEC. 7.~~ Section 8670.29.5 is added to the Government Code, to read:

~~8670.29.5. (a) The administrator shall obtain annually, at a minimum, information on the modes of transportation of oil into and within the state and the properties of the oil in order to evaluate~~

1 and identify any necessary changes in oil spill response and
2 preparedness programs to meet the goals of this chapter.

3 (b) The administrator shall provide this information to the Oil
4 Spill Technical Advisory Committee, established pursuant to
5 Section 8670.54.

6 SEC. 8. Section 8670.32.5 is added to the Government Code,
7 to read:

8 8670.32.5. The administrator, in consultation with the
9 appropriate local, state, and federal regulators, shall conduct a
10 comprehensive risk assessment of nonvessel modes of
11 transportation of oil and shall identify those operations that pose
12 the highest risk of a pollution incident in state waters. The
13 assessment shall include a consideration of the likely range in
14 properties of the oil.

15 SEC. 9. Section 8670.36 of the Government Code is amended
16 to read:

17 8670.36. The administrator shall, within five working days
18 after receipt of a contingency plan prepared pursuant to Section
19 8670.28 or 8670.35, post a notice that the plan is available for
20 review. The administrator shall send a copy of the plan within two
21 working days after receiving a request from the Oil Spill Technical
22 Advisory Committee. The State Lands Commission and the
23 California Coastal Commission shall review the plans for facilities
24 or local governments within the coastal zone. The San Francisco
25 Bay Conservation and Development Commission shall review the
26 plans for facilities or local governments within the area described
27 in Section 66610 of this code and Section 29101 of the Public
28 Resources Code. The California Environmental Protection Agency
29 and the Office of Emergency Services shall review the plans for
30 facilities or local governments located outside of the coastal zone.
31 Any state agency or committee that comments shall submit its
32 comments to the administrator within 15 days of receipt of the
33 plan. The administrator shall consider all comments.

34 SEC. 10.

35 SEC. 5. Section 8670.54 of the Government Code is amended
36 to read:

37 8670.54. (a) The Oil Spill Technical Advisory Committee,
38 hereafter in this article, the committee, is hereby established to
39 provide public input and independent judgment of the actions of
40 the administrator. The committee shall consist of 15 members, of

1 whom nine shall be appointed by the Governor, three by the
2 Speaker of the Assembly, and three by the Senate Committee on
3 Rules. The appointments shall be made in the following manner:

4 (1) The Speaker of the Assembly and Senate Committee on
5 Rules shall each appoint a member who shall be a representative
6 of the public.

7 (2) The Governor shall appoint a member who has a
8 demonstrable knowledge of marine transportation.

9 (3) The Speaker of the Assembly and the Senate Committee on
10 Rules shall each appoint two members who have demonstrable
11 knowledge of environmental protection and the study of
12 ecosystems.

13 (4) The Governor shall appoint a member who has served as a
14 local government elected official or who has worked for a local
15 government.

16 (5) The Governor shall appoint a member who has experience
17 in oil spill response and prevention programs.

18 (6) The Governor shall appoint a member who has been
19 employed in the petroleum industry.

20 (7) The Governor shall appoint a member who has worked in
21 state government.

22 (8) The Governor shall appoint a member who has demonstrable
23 knowledge of the dry cargo vessel industry.

24 (9) The Governor shall appoint a member who has demonstrable
25 knowledge of the railroad industry.

26 (10) The Governor shall appoint a member who has
27 demonstrable knowledge of the oil production industry.

28 (11) The Governor shall appoint a member who has
29 demonstrable knowledge of the truck transportation industry.

30 (b) The committee shall meet as often as required, but at least
31 twice per year. Members shall be paid one hundred dollars (\$100)
32 per day for each meeting and all necessary travel expenses at state
33 per diem rates.

34 (c) The administrator and any personnel the administrator
35 determines to be appropriate shall serve as staff to the committee.

36 (d) A chair and vice chair shall be elected by a majority vote of
37 the committee.

38 ~~SEC. 11. Section 8670.56.6 of the Government Code is~~
39 ~~amended to read:~~

1 ~~8670.56.6. (a) (1) Except as provided in subdivisions (b) and~~
2 ~~(d), and subject to subdivision (e), a person, including, but not~~
3 ~~limited to, an oil spill cooperative, its agents, subcontractors, or~~
4 ~~employees, shall not be liable under this chapter or the laws of the~~
5 ~~state to any person for costs, damages, or other claims or expenses~~
6 ~~as a result of actions taken or omitted in good faith in the course~~
7 ~~of rendering care, assistance, or advice in accordance with the~~
8 ~~National Contingency Plan, the California oil spill contingency~~
9 ~~plan, or at the direction of the administrator, onsite coordinator,~~
10 ~~or the Coast Guard in response to a spill or threatened spill.~~

11 ~~(2) The qualified immunity under this section shall not apply~~
12 ~~to any oil spill response action that is inconsistent with the~~
13 ~~following:~~

14 ~~(A) The directions of the unified command, consisting of at~~
15 ~~least the Coast Guard and the administrator.~~

16 ~~(B) In the absence of a unified command, the directions of the~~
17 ~~administrator pursuant to Section 8670.27.~~

18 ~~(C) In the absence of directions pursuant to subparagraph (A)~~
19 ~~or (B), applicable oil spill contingency plans implemented under~~
20 ~~this division.~~

21 ~~(3) Nothing in this section shall, in any manner or respect, affect~~
22 ~~or impair any cause of action against or any liability of any person~~
23 ~~or persons responsible for the spill, for the discharged oil, or for~~
24 ~~the vessel, terminal, pipeline, or facility from which the oil was~~
25 ~~discharged. The responsible person or persons shall remain liable~~
26 ~~for any and all damages arising from the discharge, including~~
27 ~~damages arising from improperly carried out response efforts, as~~
28 ~~otherwise provided by law.~~

29 ~~(b) Nothing in this section shall, in any manner or respect, affect~~
30 ~~or impair any cause of action against or any liability of any party~~
31 ~~or parties responsible for the spill, or the responsible party's agents,~~
32 ~~employees, or subcontractors, except persons immunized under~~
33 ~~subdivision (a) for response efforts, for the discharged oil, or for~~
34 ~~the vessel, truck, terminal, pipeline, or facility from which the oil~~
35 ~~was discharged.~~

36 ~~(e) The responsible party or parties shall be subject to both of~~
37 ~~the following:~~

38 ~~(1) Notwithstanding subdivision (b) or (i) of Section 8670.56.5;~~
39 ~~or any other law, be strictly and jointly and severally liable for all~~
40 ~~damages arising pursuant to subdivision (h) of Section 8670.56.5~~

1 from the response efforts of its agents, employees, subcontractors,
2 or an oil spill cooperative of which it is a member or with which
3 it has a contract or other arrangement for cleanup of its oil spills;
4 unless it would have a defense to the original spill.

5 (2) Remain strictly liable for any and all damages arising from
6 the response efforts of a person other than a person specified in
7 paragraph (1).

8 (d) Nothing in this section shall immunize a cooperative or any
9 other person from liability for acts of gross negligence or willful
10 misconduct in connection with the cleanup of a spill.

11 (e) This section does not apply to any action for personal injury
12 or wrongful death.

13 (f) As used in this section, a “cooperative” means an
14 organization of private persons that is established for the primary
15 purpose and activity of preventing or rendering care, assistance,
16 or advice in response to a spill or threatened spill.

17 (g) Except for the responsible party, membership in a
18 cooperative shall not be grounds, in and of itself, for liability
19 resulting from cleanup activities of the cooperative.

20 (h) For purposes of this section, there shall be a rebuttable
21 presumption that an act or omission described in subdivision (a)
22 was taken in good faith.

23 (i) In any situation in which immunity is granted pursuant to
24 subdivision (a) and a responsible party is not liable, is not liable
25 for noneconomic damages caused by another, or is partially or
26 totally insolvent, the fund provided for in Article 7 (commencing
27 with Section 8670.46) shall reimburse, in accordance with its terms,
28 claims of any injured party for which a person who is granted
29 immunity pursuant to this section would otherwise be liable.

30 (j) (1) The immunity granted by this section shall only apply
31 to response efforts that are undertaken after the administrator
32 certifies that contracts with qualified and responsible persons are
33 in place to ensure an adequate and expeditious response to any
34 foreseeable oil spill that may occur in waters of the state for which
35 the responsible party (A) cannot be identified or (B) is unable or
36 unwilling to respond, contain, and clean up the oil spill in an
37 adequate and timely manner. In negotiating these contracts, the
38 administrator shall procure, to the maximum extent practicable,
39 the services of persons who are willing to respond to oil spills with
40 no, or lesser, immunity than that conferred by this section, but, in

1 no event, a greater immunity. The administrator shall make the
2 certification required by this subdivision on an annual basis. Upon
3 certification, the immunity conferred by this section shall apply
4 to all response efforts undertaken during the calendar year to which
5 the certification applies. In the absence of the certification required
6 by this subdivision, the immunity conferred by this section shall
7 not attach to any response efforts undertaken by any person in
8 waters of the state.

9 (2) In addition to the authority to negotiate contracts described
10 in paragraph (1), the administrator may also negotiate and enter
11 into indemnification agreements with qualified and financially
12 responsible persons to respond to oil spills that may occur in waters
13 of the state for which the responsible party (A) cannot be identified
14 or (B) is unable or unwilling to respond, contain, and clean up the
15 oil spill in an adequate and timely manner.

16 (3) The administrator may indemnify response contractors for
17 (A) all damages payable by means of settlement or judgment that
18 arise from response efforts to which the immunity conferred by
19 this section would otherwise apply, and (B) reasonably related
20 legal costs and expenses incurred by the responder, provided that
21 indemnification shall only apply to response efforts undertaken
22 after the expiration of any immunity that may exist as the result
23 of the contract negotiations authorized in this subdivision. In
24 negotiating these contracts, the administrator shall procure, to the
25 maximum extent practicable, the services of persons who are
26 willing to respond to oil spills with no, or as little, right to
27 indemnification as possible. All indemnification shall be paid by
28 the administrator from the Oil Spill Response Trust Fund.

29 (4) (A) The contracts required by this section, and any other
30 contracts entered into by the administrator for response,
31 containment, or cleanup of an existing spill, or for response to an
32 imminent threat of a spill, the payment of which is to be made
33 from the Oil Spill Response Trust Fund created pursuant to Section
34 8670.46, shall be exempt from Part 2 (commencing with Section
35 10100) of Division 2 of the Public Contract Code and Article 6
36 (commencing with Section 999) of Chapter 6 of Division 4 of the
37 Military and Veterans Code.

38 (B) The exemption specified in subparagraph (A) applies only
39 to contracts for which the services are used for a period of less
40 than 90 days, cumulatively, per year.

1 ~~(C) This paragraph shall not be construed as limiting the~~
2 ~~administrator's authority to exercise the emergency powers granted~~
3 ~~pursuant to subdivision (c) of Section 8670.62, including the~~
4 ~~authority to enter into emergency contracts that are exempt from~~
5 ~~approval by the Department of General Services.~~

6 ~~(k) (1) With regard to a person who is regularly engaged in the~~
7 ~~business of responding to oil spills, the immunity conferred by~~
8 ~~this section shall not apply to any response efforts by that person~~
9 ~~that occur later than 60 days after the first day the person's response~~
10 ~~efforts commence.~~

11 ~~(2) Notwithstanding the limitation contained in paragraph (1),~~
12 ~~the administrator may extend, upon making all the following~~
13 ~~findings, the period of time, not to exceed 30 days, during which~~
14 ~~the immunity conferred by this section applies to response efforts:~~

15 ~~(A) Due to inadequate or incomplete containment and~~
16 ~~stabilization, there exists a substantial probability that the size of~~
17 ~~the spill will significantly expand and (i) threaten previously~~
18 ~~uncontaminated resources, (ii) threaten already contaminated~~
19 ~~resources with substantial additional contamination, or (iii)~~
20 ~~otherwise endanger the public health and safety or harm the~~
21 ~~environment.~~

22 ~~(B) The remaining work is of a difficult or perilous nature that~~
23 ~~extension of the immunity is clearly in the public interest.~~

24 ~~(C) No other qualified and financially responsible contractor is~~
25 ~~prepared and willing to complete the response effort in the absence~~
26 ~~of the immunity, or a lesser immunity, as negotiated by contract.~~

27 ~~(3) The administrator shall provide five days' notice of his or~~
28 ~~her proposed decision to either extend, or not extend, the immunity~~
29 ~~conferred by this section. Interested parties shall be given an~~
30 ~~opportunity to present oral and written evidence at an informal~~
31 ~~hearing. In making his or her proposed decision, the administrator~~
32 ~~shall specifically seek and consider the advice of the relevant Coast~~
33 ~~Guard representative. The administrator's decision to not extend~~
34 ~~the immunity shall be announced at least 10 working days before~~
35 ~~the expiration of the immunity to provide persons an opportunity~~
36 ~~to terminate their response efforts as contemplated by paragraph~~
37 ~~(4).~~

38 ~~(4) A person or their agents, subcontractors, or employees shall~~
39 ~~not incur any liability under this chapter or any other provision of~~
40 ~~law solely as a result of that person's decision to terminate their~~

1 ~~response efforts because of the expiration of the immunity~~
2 ~~conferred by this section. A person's decision to terminate response~~
3 ~~efforts because of the expiration of the immunity conferred by this~~
4 ~~section shall not in any manner impair, curtail, limit, or otherwise~~
5 ~~affect the immunity conferred on the person with regard to the~~
6 ~~person's response efforts undertaken during the period of time the~~
7 ~~immunity applied to those response efforts.~~

8 ~~(5) The immunity granted under this section shall attach, without~~
9 ~~the limitation contained in this subdivision, to the response efforts~~
10 ~~of any person who is not regularly engaged in the business of~~
11 ~~responding to oil spills. A person who is not regularly engaged in~~
12 ~~the business of responding to oil spills includes, but is not limited~~
13 ~~to, (A) a person who is primarily dedicated to the preservation and~~
14 ~~rehabilitation of wildlife and (B) a person who derives his or her~~
15 ~~livelihood primarily from fishing.~~

16 ~~(f) As used in this section, "response efforts" means rendering~~
17 ~~care, assistance, or advice in accordance with the National~~
18 ~~Contingency Plan, the California oil spill contingency plan, or at~~
19 ~~the direction of the administrator, United States Environmental~~
20 ~~Protection Agency, or the Coast Guard in response to a spill or~~
21 ~~threatened spill into waters of the state.~~

22 ~~SEC. 12.~~

23 ~~SEC. 6.~~ Section 25364 of the Public Resources Code is
24 amended to read:

25 25364. (a) Any person required to present information to the
26 commission pursuant to Section 25354 may request that specific
27 information be held in confidence. Information requested to be
28 held in confidence shall be presumed to be confidential.

29 (b) Information presented to the commission pursuant to Section
30 25354 shall be held in confidence by the commission or aggregated
31 to the extent necessary to ensure confidentiality if public disclosure
32 of the specific information or data would result in unfair
33 competitive disadvantage to the person supplying the information.

34 (c) (1) Whenever the commission receives a request to publicly
35 disclose unaggregated information, or otherwise proposes to
36 publicly disclose information submitted pursuant to Section 25354,
37 notice of the request or proposal shall be provided to the person
38 submitting the information. The notice shall indicate the form in
39 which the information is to be released. Upon receipt of notice,
40 the person submitting the information shall have 10 working days

1 in which to respond to the notice to justify the claim of
2 confidentiality on each specific item of information covered by
3 the notice on the basis that public disclosure of the specific
4 information would result in unfair competitive disadvantage to the
5 person supplying the information.

6 (2) The commission shall consider the respondent's submission
7 in determining whether to publicly disclose the information
8 submitted to it to which a claim of confidentiality is made. The
9 commission shall issue a written decision that sets forth its reasons
10 for making the determination whether each item of information
11 for which a claim of confidentiality is made shall remain
12 confidential or shall be publicly disclosed.

13 (d) The commission shall not make public disclosure of
14 information submitted to it pursuant to Section 25354 within 10
15 working days after the commission has issued its written decision
16 required in this section.

17 (e) No information submitted to the commission pursuant to
18 Section 25354 shall be deemed confidential if the person submitting
19 the information or data has made it public.

20 (f) With respect to petroleum products and blendstocks reported
21 by type pursuant to paragraph (1) or (2) of subdivision (a) of
22 Section 25354 and information provided pursuant to subdivision
23 (h) or (i) of Section 25354, neither the commission nor any
24 employee of the commission shall do any of the following:

25 (1) Use the information furnished under paragraph (1) or (2) of
26 subdivision (a) of Section 25354 or under subdivision (h) or (i) of
27 Section 25354 for any purpose other than the statistical purposes
28 for which it is supplied.

29 (2) Make any publication whereby the information furnished
30 by any particular establishment or individual under paragraph (1)
31 or (2) of subdivision (a) of Section 25354 or under subdivision (h)
32 or (i) of Section 25354 can be identified.

33 (3) Permit anyone other than commission members and
34 employees of the commission to examine the individual reports
35 provided under paragraph (1) or (2) of subdivision (a) of Section
36 25354 or under subdivision (h) or (i) of Section 25354.

37 (g) Notwithstanding any other law, the commission may disclose
38 confidential information received pursuant to subdivision (a) of
39 Section 25304 or Section 25354 to the State Air Resources Board
40 or the administrator for oil spill response, appointed pursuant to

1 Section 8670.4 of the Government Code, if the state board or the
2 administrator, as applicable, agrees to keep the information
3 confidential. With respect to the information they receive, the state
4 board and the administrator shall be subject to all pertinent
5 provisions of this section.

6 ~~SEC. 13.~~

7 *SEC. 7.* Section 765.5 of the Public Utilities Code is amended
8 to read:

9 765.5. (a) The purpose of this section is to provide that the
10 commission takes all appropriate action necessary to ensure the
11 safe operation of railroads in this state.

12 (b) The commission shall dedicate sufficient resources necessary
13 to adequately carry out the State Participation Program for the
14 regulation of rail transportation of hazardous materials as
15 authorized by the Hazardous Material Transportation Uniform
16 Safety Act of 1990 (Public Law 101-615).

17 (c) On or before July 1, 1992, the commission shall hire a
18 minimum of six additional rail inspectors who are or shall become
19 federally certified, consisting of three additional motive power
20 and equipment inspectors, two signal inspectors, and one operating
21 practices inspector, for the purpose of enforcing compliance by
22 railroads operating in this state with state and federal safety
23 regulations.

24 (d) On or before July 1, 1992, the commission shall establish,
25 by regulation, a minimum inspection standard to ensure, at the
26 time of inspection, that railroad locomotives, equipment, and
27 facilities located in class I railroad yards in California will be
28 inspected not less frequently than every 120 days, and inspection
29 of all branch and main line track not less frequently than every 12
30 months.

31 (e) Commencing July 1, 2008, in addition to the minimum
32 inspections undertaken pursuant to subdivision (d), the commission
33 shall conduct focused inspections of railroad yards and track, either
34 in coordination with the Federal Railroad Administration or as the
35 commission determines to be necessary. The focused inspection
36 program shall target railroad yards and track that pose the greatest
37 safety risk, based on inspection data, accident history, and rail
38 traffic density.

39 (f) Commencing January 1, 2015, in addition to the inspections
40 undertaken pursuant to subdivisions (d) and (e), the commission

1 shall conduct expanded focused inspections, either in coordination
2 with the Federal Railroad Administration or as the commission
3 determines to be necessary, of *railroad* bridges and grade crossings
4 over which oil is being transported and oil unloading *rail* facilities,
5 including movement within these facilities and onsite storage *on*
6 *rail trackage*. The expanded focused inspection program shall
7 target *railroad* bridges, grade crossings, and oil unloading *rail*
8 facilities that pose the greatest safety risk, based on inspection
9 data, accident history, and rail traffic density.

10 ~~(g) The commission may regulate essential local safety hazards~~
11 ~~for the transport of oil more stringently than federal regulation,~~
12 ~~pursuant to Section 20106 of Title 49 of the United States Code.~~

13 ~~SEC. 14. Section 7711 of the Public Utilities Code is amended~~
14 ~~to read:~~

15 ~~7711. The commission shall annually report to the Legislature,~~
16 ~~on or before July 1, on sites on railroad lines in the state it finds~~
17 ~~to be hazardous. The report shall include, but not be limited to,~~
18 ~~information on all of the following:~~

19 ~~(a) A list of all railroad derailment accident sites in the state on~~
20 ~~which accidents have occurred within at least the previous five~~
21 ~~years. The list shall describe the nature and probable causes of the~~
22 ~~accidents, if known, and shall indicate whether the accidents~~
23 ~~occurred at or near sites that the commission has determined,~~
24 ~~pursuant to subdivision (b), pose a local safety hazard.~~

25 ~~(b) A list of all railroad sites in the state that the commission~~
26 ~~determines, pursuant to Section 20106 of Title 49 of the United~~
27 ~~States Code, pose a local safety hazard. The commission may~~
28 ~~submit in the annual report the list of railroad sites submitted in~~
29 ~~the immediate prior year annual report, and may amend or revise~~
30 ~~that list from the immediate prior year as necessary. Factors that~~
31 ~~the commission shall consider in determining a local safety hazard~~
32 ~~may include, but need not be limited to, all of the following:~~

33 ~~(1) The severity of grade and curve of track.~~

34 ~~(2) The value of special skills of train operators in negotiating~~
35 ~~the particular segment of railroad line.~~

36 ~~(3) The value of special railroad equipment in negotiating the~~
37 ~~particular segment of railroad line.~~

38 ~~(4) The types of commodities transported on or near the~~
39 ~~particular segment of railroad line.~~

1 ~~(5) The hazard posed by the release of the commodity into the~~
2 ~~environment.~~

3 ~~(6) The value of special railroad equipment in the process of~~
4 ~~safely loading, transporting, storing, or unloading potentially~~
5 ~~hazardous commodities.~~

6 ~~(7) The proximity of railroad activity to human activity or~~
7 ~~sensitive environmental areas.~~

8 ~~(8) A list of the root causes and significant contributing factors~~
9 ~~of all train accidents or derailments investigated.~~

10 ~~(e) In determining which railroad sites pose a local safety hazard~~
11 ~~pursuant to subdivision (b), the commission shall consider the~~
12 ~~history of accidents at or near the sites. The commission shall not~~
13 ~~limit its determination to sites at which accidents have already~~
14 ~~occurred, but shall identify potentially hazardous sites based on~~
15 ~~the criteria enumerated in subdivision (b) and all other criteria that~~
16 ~~the commission determines influence railroad safety. The~~
17 ~~commission shall also consider whether any local safety hazards~~
18 ~~at railroad sites have been eliminated or sufficiently remediated~~
19 ~~to warrant removal of the site from the list required under~~
20 ~~subdivision (b).~~

21 ~~(d) The timing, nature, and status of the remediation of defects~~
22 ~~and violations of federal and state law related to the transport and~~
23 ~~delivery of oil detected by the commission through its inspections.~~

24 ~~SEC. 15.~~

25 ~~SEC. 8.~~ Nothing in this act is intended to limit the police power
26 or other authority of a local government or government regulator
27 to enforce any other state or federal environmental law or
28 regulation.